

DEECA – TERMS OF BUSINESS FOR TESTING SERVICES

1. DEFINITIONS

In this Agreement, the following definitions apply:

Agreement means this agreement comprising these terms of business and the Details of Service.

Client means the person or company requesting the Services identified in the Details of Service.

Confidential Information of a party means all information treated by the disclosing party as confidential, and disclosed by the disclosing party to the other party or of which the other party becomes aware (whether before or after the date of this Agreement) except information that:

- is public knowledge otherwise than as a result of a breach of confidentiality by the other party;
- is already known to a party at the time of disclosure by the other party; or
- is independently created by employees of a party without access to the other party's Confidential Information.

DEECA means the State of Victoria as represented by its Department of Energy, Environment and Climate Action (ABN 90 719 052 204).

Details of Service means, as applicable:

- plant diagnostic services* - the interim report (**Interim Report**) in relation to the Services issued by DEECA to Client (and sent in response to Client's submission form requesting testing services (**Submission Form**));
- tobacco testing* - the schedule and quotation issued by DEECA to Client (**TT Schedule**); or
- veterinary laboratory services* - either:
 - for testing of 50 samples or more, the quotation for the Services issued by DEECA to Client (**Quotation**); or
 - for testing of less than 50 samples, the request made by Client to DEECA to conduct the Services according to the confidential 'Veterinary Laboratory Services Schedule of Tests and Charges' issued by DEECA from time to time (**Client Request**).

Results means the report detailing the results and outcomes of the Services to be provided by DEECA to Client in accordance with the Details of Service.

Services means the testing or diagnostic services to be performed by DEECA on the samples provided by Client as set out in the Details of Service.

Services Fee means the fees and other costs payable for the Services as set out in the Details of Service.

Third Party Claim means any claim, notice, demand, action, proceeding, litigation by, or judgement or award in favour of, a third party which arises directly or indirectly as a result of (1) DEECA's use in the performance of the Services of the material and information provided by Client, or (2) Client's exploitation of the Results.

2. COMMENCEMENT OF SERVICES, TERM AND TIMELINES

2.1. *Plant diagnostic services*: This Agreement and the Services will commence upon DEECA's receipt of the Submission Form and necessary supporting information from Client, and will continue until the Results have been delivered to Client in accordance with the Details of Service, unless (1) Client advises DEECA in writing that it does not wish the Services to be provided by 5pm of the next business day following receipt of the Submission Receipt Confirmation, or (2) terminated earlier pursuant to clause 11.

2.2. *Tobacco testing*: This Agreement and the Services will commence upon DEECA's receipt of the signed TT Schedule from Client within 14 days of its date and payment of the initial Services Fee detailed in the TT Schedule, and will continue until the Results have been delivered to Client in accordance with the Details of Service, unless terminated earlier pursuant to clause 11.

2.3. *Veterinary laboratory services*: This Agreement and the Services will commence (1) for testing of 50 samples or more, upon Client's confirmation to DEECA of acceptance of the Quotation within 30 days of its date, or (2) for testing of less than 50 samples, upon DEECA's acceptance of Client Request, and in each case will continue until the Results have been delivered to Client in accordance with the Details of Service, unless terminated earlier pursuant to clause 11.

Timelines

2.4. Client acknowledges that DEECA's primary role is to undertake analytical work for the State of Victoria, that DEECA has to give priority to such work, and that DEECA may delay the provision of the Services and the Results to Client to accommodate such work. DEECA will not be liable for any losses resulting directly or indirectly from any such delay (nor from Client's delay in providing necessary information to DEECA to provide the Services). DEECA will notify Client as soon as it becomes aware of anything which may delay the provision of the Services or the Results.

2.5. *Veterinary laboratory services*: A minimum of 7 days after receipt of the last sample from Client is required for completion of the Services. Client must provide 10 business days' notice prior to submitting 50 or more samples to DEECA, and which will require a Quotation.

3. FEES AND PAYMENT

3.1. Client must pay the Services Fee in the amounts and at the times specified in the Details of Service, or if not specified, within 30 days of the date of DEECA's invoice accompanying the Results. The Services Fee includes GST and DEECA will provide Client with an invoice which separately shows the GST.

3.2. DEECA will be entitled to charge interest on the Services Fee from the date the fee falls due until paid, at the relevant rate charged by the Westpac Banking Corporation on overdrafts in the amount of over \$1,000,000.00 and that interest will accrue from the date the payment falls due to the date the payment is made.

3.3. Client will pay any applicable additional charges that may necessarily result from or be incidental to the provision of the Services, including (1) courier services for transfer of samples to other laboratories for tests not conducted at DEECA's premises, (2) any changes in DEECA's costs which are beyond its control, (3) quarantine; (4) testing conducted outside of normal business hours to meet Client needs, (5) incineration/disposal of carcasses, infectious waste of animal origin, or noxious samples, and (6) storage of samples after completion of testing where requested by Client. DEECA will notify Client of any additional charges that may apply prior to commencement of testing.

3.4. *Examination fee for plant diagnostic services*: If Client advises DEECA that it does not wish the Services to be provided by 5pm of the next business day following receipt of the Submission Receipt Confirmation, Client must pay the examination fee specified in the Submission Form to DEECA within 14 days of receipt of DEECA's invoice.

3.5. *Veterinary laboratory services for testing of less than 50 samples*: A minimum charge of \$27.50 (GST inclusive) applies to each submission of samples for testing. DEECA reserves the right to increase the charges listed in the 'Veterinary Laboratory Services Schedule of Tests and Charges' at any time.

4. CLIENT'S ROLE

4.1. Client must at its own cost provide DEECA with all material, information, and samples necessary for DEECA to provide the Services. Client will notify DEECA in writing of all safety or health hazards relating to the samples, and any special procedures for their handling, testing, storage, transport, and disposal (which will be undertaken at the cost of Client).

4.2. *Tobacco testing*: Client is responsible for (1) ensuring that samples supplied for testing are representative of the product or material to be analysed, (2) any preservation of sample integrity

necessary, and (3) retaining any duplicate or control samples. DEECA will have the right to refuse to conduct any test and return samples to Client (at Client's cost) where it determines at its absolute discretion that such testing may pose a safety or health hazard.

4.3. *Veterinary laboratory services*: If applicable, Client must (1) provide DEECA with a quarantine schedule with anticipated bleed dates, dates of supply of samples and the date the Results will be required, and (2) specify the testing requirements and is responsible for ensuring that these will meet any requirements set down by DAWR or the destination country for export.

5. SERVICES

5.1. Following receipt of the samples and the necessary material and information from Client, DEECA agrees to provide the Services and Results in accordance with the Details of Service and the terms of this Agreement (including clauses 2.4 and 2.5). Client acknowledges and agrees that once in the possession of DEECA the samples and any cultures and DNA isolated from the samples become the property of DEECA and that through provision of the Services the samples may be altered, damaged, lost or destroyed, and DEECA will have no liability to Client or any third party as a result.

5.2. Any variation to the Services specified in the Details of Service requested by Client will be subject to DEECA's agreement and may incur additional fees.

5.3. On conclusion of the Services, unless specified otherwise in the Details of Service, DEECA is not obliged to return any samples, whether in original form or otherwise, to Client unless otherwise agreed by DEECA and at the cost of Client. DEECA may in its absolute discretion store, experiment upon, destroy or otherwise deal with the samples and any cultures and DNA isolated from the samples as it sees fit, provided that DEECA will comply with the requirements of any relevant Acts, Regulations or guidelines.

5.4. DEECA, its officers, employees and agents will not be under any obligation to provide evidence or appear as expert witnesses in court proceedings as a consequence of the performance of the Services, and any request for them to do so will not be granted without the express written consent of the Deputy Secretary, DEECA or approved delegate.

6. RESULTS AND OTHER INTELLECTUAL PROPERTY

6.1. Subject to payment of the Services Fee, the Results will belong to Client. The Results may be used by DEECA for any purpose including use for statistical, surveillance, extension, certification and regulatory purposes in accordance with DEECA policies (e.g. for disease management or residue monitoring). Data extracted from the Results may be entered into databases kept for such purposes. The origin of the Results and identity of Client will be excluded from such data and will remain confidential unless required to be disclosed by law or other legitimate government requirement.

6.2. All methodologies, know-how, expertise, knowledge or other technology arising from the provision of the Services or existing prior to the commencement of the Services will be owned by or remain the property of DEECA.

7. CONFIDENTIALITY

Each party will keep the other party's Confidential Information confidential and will only use it for the purposes of this Agreement. The Results will be treated as Client's Confidential Information. Each party may disclose the other party's Confidential Information to its professional advisers subject to an obligation of confidence or to its responsible Minister of the Crown, and to the extent required by applicable law. Each party's obligation of confidentiality survives the expiry or termination of this Agreement. Subject to clause 6.1, upon termination or expiry of this Agreement, each party will destroy the other party's Confidential Information which relates to this Agreement, the Services or the Results, except that a party may retain any Confidential Information and records as required by law and as consistent with its rights under this Agreement.

8. WARRANTIES AND LIABILITY

DEECA will perform the Services according to proper professional standards. Subject to the foregoing, to the full extent permitted by law, all other express or implied terms or warranties in relation to this Agreement, the Services and the Results are excluded (including with respect to the accuracy of any information contained in the Results). Client interprets, uses and exploits the Results at its own risk and DEECA accepts no responsibility or liability for any person acting or relying on the Results. DEECA will not be liable for any special, indirect or consequential damages arising under or pursuant to this Agreement. To the full extent permitted by law, DEECA's total liability to Client for any loss or damage arising directly or indirectly in relation to this Agreement, the Services and the Results (including consequential, indirect or special loss or damages) is limited, at the option of DEECA, to supplying the Services again or payment of the cost of having the Services supplied again. Client releases and indemnifies and continues to release and indemnify DEECA (and its directors, officers, employees, agents and contractors) from and against any Third Party Claim.

9. DISPUTE RESOLUTION

If a dispute arises between the parties (**Dispute**), the parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to their chief executive officers, or their nominees. If the Dispute has not been resolved by negotiation within a reasonable time then either party may refer the Dispute to mediation and will do so before initiating proceedings in a court to resolve the Dispute. A Dispute which is referred to mediation will be referred to the Australian Dispute Centre Limited (**ADC**) and be conducted in accordance with the ADC Guidelines for Commercial Mediation. If the Dispute has not been resolved within 30 days of referral to ADC either party is free to initiate proceedings in a court. Nothing in this clause will prevent a party from seeking interlocutory relief through courts of appropriate jurisdiction.

10. USE OF NAMES AND LOGOS

Client must not use the name or logo of DEECA or the State of Victoria or the names of staff of either organisation without the prior written consent of DEECA.

11. TERMINATION

Either party may terminate this Agreement on 7 days' written notice to the other party. DEECA may terminate this Agreement immediately if Client fails to make any payment when due. Upon termination, Client will pay to DEECA all unpaid Services Fees for Services completed at the date of termination. Clauses 2.4, 3.2, 3.3, 3.4, 5.1 (in relation to samples), 5.3, 5.4, 6 to 10, 12, 13 and this clause 11 survive the expiry or termination of this Agreement.

12. DEPARTMENT LIMITATION

To the extent that this Agreement applies to the State of Victoria, it is limited to the activities and resources of the Department of Energy, Environment and Climate Action.

13. GENERAL

13.1. This Agreement is governed by the laws of Victoria, Australia and the parties submit to the exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning this Agreement.

13.2. This Agreement constitutes the entire agreement of the parties with respect to its subject matter, supersedes any previous offers, representations and agreements, and may only be amended or modified by written agreement between the parties. These terms of business prevail over the Details of Service if there is an inconsistency.

13.3. If any part of this Agreement is unenforceable, it will be read down if possible so as to be enforceable. If that is not possible, to the extent permissible according to law, such part of this Agreement will be severed to the extent of the unenforceability, and all other provisions of this Agreement will remain enforceable.